VIRGINIA LAW REGISTER

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October Term of U. S. Supreme Court.

The three great suits which were assigned for reargument by the Supreme Court of the United States after Justice Brewer's death, namely, the Standard Oil Case, the American Tobacco Case, and the Corporation Tax Case, will undoubtedly be taken up soon after the court reconvenes, which is on October 10th, because of the great business uncertainty that has resulted from the delay, and they will in all likelihood be heard in the above order, though nothing authoritative is known as to this. There was a rumor afloat that the court has found reason to doubt the constitutionality of the act only as to two of the fifteen cases, but this was probably based solely on the fact that the court only assigned two of the fifteen cases for reargument at the October term. Its later announcement, however, that all the cases were to be reargued shows that the rumor had no foundation, more especially as the court explained that they had delayed the reassignment hoping that a satisfactory determination, obviating the necessity for a rehearing, might be reached before the summer recess. Although the court is more in arrears by 108 cases than they were this time last year, it is altogether a vain expectation to imagine that the court will postpone the hearing of these important cases, as much of the present business depression is due to the uncertainty over their outcome. The country expects a clear statement from the court this time as to the real meaning of the Sherman Anti-Trust Act.

Directing Verdicts.

In Hargrave's Adm'r *v.* Shaw Land & Timber Co., reported ante, Judge Buchanan said: "While directing a verdict is not in accordance with the practice in this state, yet where it appears that no other verdict could have been properly rendered, the error was harmless, and the judgment will not be reversed on that ground." This opinion of Judge Buchanan would seem to support the

following statement of the rule with us now as to directing verdicts: *If the case is so plainly with one side or the other that a different verdict would need to be set aside as contrary to the evidence, then a verdict should be directed.* There is very little difference, then, between our practice and the practice prevailing in states which have confessedly adopted the saner rule of taking the case from the jury, when only one verdict could properly be rendered.

However that may be, this case is indicative of a growing practice on the circuits in this state, notwithstanding our traditional love of the jury system, and the time-honored and rock-ribbed rule of practice to the contrary. That the LAW REGISTER rejoices over this trend of decision is clearly reflected in many editorials and annotations to cases, and in the next issue an article by Mr. Samuel C. Graham, of the Tazewell Bar, will appear in which he voices very ably the settled opinion of the REGISTER. We hope the time will come when our courts will come out boldly and change this inconvenient and oftentimes expensive practice in favor of the rule prevailing in most states, just as they departed from the scintilla rule although that rule had existed in this state upwards of a hundred years.

Time of Filing Pleadings.

A recent case of considerable importance and of more than ordinary interest is that of Wickham *v.* Green, decided by our Supreme Court on June 9, 1910. In that case more than one month had elapsed after process returned executed without the declaration having been filed, but the summons was issued just seventeen days before the right of action would have been barred by the statute of limitations. It will be seen that leave to file the declaration after the expiration of the statutory period would have amounted to denying the defendants the right to plead the statute of limitations. The case was a hard one, and hard cases, it is said, usually make bad law. But Judge Whittle, in his accustomed clear and concise style, decided that it was the duty of the clerk, by mandatory requirement of § 3241 of the Code, to have entered the suit dismissed. There can be no

doubt of the correctness of this ruling, and it will have a very salutary effect on many that have seemingly come to regard rules of practice as resting largely in the discretion of an easy-going clerk, who is willing to relieve his friends and acquaintances at all times from the consequences of their own neglect and ignorance. Experience has shown that more harm than good comes from disregarding wholesome rules of practice, especially such a rule as this intended to expedite the maturing of causes for hearing. The court very sagely adds: "It is always to be regretted when a case has to be disposed of on other grounds than those that go to the very right and merits of the cause. Courts cannot, however, permit considerations of hardships in particular cases to cause them to disregard and set at naught the plain provisions of a positive statute. To do so would be to usurp legislative functions, and would operate a judicial repeal of the statute."

The Law Clerk.

Much notice has been directed lately to the high figures some American lawyers are commanding for their services. According to a statement published a short time ago, "the greatest legal fees ever paid are classified thus: John B. Stanchfield, for defending F. A. Heinze, $800,000, the largest fee ever received in a criminal case; Samuel Untermyer, in the Boston and Utah Copper Merger, $800,000 (part in stock); James B. Dill, for settling the affairs of the Carnegie Steel Company, $1,000,000; William Nelson Cromwell, Panama Canal sale, $700,000."

All of these are New York lawyers, a fact which suggests the truth that some of the best work done in these particular cases was done, doubtless, by men who did not receive anything extra for it, but had to satisfy themselves with their paltry $20 the week as law clerks in the city of New York, where living expenses are so high and the strain of business life so great. Of course, in every business, there is work to be done by subordinates that is indispensable to the completed transaction, but it is routine work, mechanical, and calling for no special talent nor ability.

In the case of the law clerk it is different. Hoping through the years that he may get "his chance," he struggles along on a mere

pittance, giving his education, his training, his brain, undergoing a fierce grind, rarely receiving more than $25 the week. It is his ability for research, his learning in the law, his initiative, his originality, that provides the backbone for the brief of the great lawyer, who pockets the proceeds. Some of the really best lawyers in New York to-day have grown gray in mere clerkships, are men who have hoped and hoped through all the years for advancement, bitterly realizing that they were giving the best of their body and brains to a thankless task.

New York, it is true, holds out great opportunities—but how tragic is the proportion of those who fail to get in touch with these opportunities, compared with those who succeed. Year after year the most brilliant graduates of the greatest law schools of the country are pouring into the metropolis, streaming into the big law offices, eager, ambitious, capable, well trained—and yet those who succeed are conspicuously few. Had these men gone back to their homes or to some place where competition and congestion were not so great, how much better chances they would have had, not only to secure a lucrative practice, but to enjoy that place in the community which is peculiarly the lawyer's. New York is a catacomb for the ambitions of many brilliant lawyers, lured there by the false music of high fees and big interests and unlimited opportunities.

Is it not then wise for the law student who is about to enter his profession in a New York office, to become a mere part of the machinery, one sheep in a vast office flock, to weigh things carefully? For the Southern man, anyway, the South is the place—in law, as well as in any other profession or business. The air is freer in the South, the way clearer, and the opportunity very much greater.

Right of Carriers to Separate the Races.

The Supreme Court of the United States has definitely pointed out a way to carriers of passengers, by which they may conform to enlightened public sentiment with regard to an intermixture of the two races even on interstate coaches, without fear of rendering themselves liable for damages. In Childs *v.* Chesapeake & Ohio R. Co., decided May 31, the United States Supreme Court sustained the

constitutionality of the statute of Kentucky requiring separate accommodations for white and colored passengers. The decision of the Circuit Court, declaring that a railroad company may, independently of a state law, adopt and enforce rules requiring colored persons, although they are interstate passengers, to occupy separate coaches, was affirmed.

This decision will be hailed with delight in the North as well as in the South. It is true, it was long ago decided by the state courts that in the absence of statute, or some manner of state governmental regulation, the right of a common carrier to make and enforce rules providing for the separation, classification, and accommodation of its passengers, depends simply on the reasonableness of such rules, without reference to the question of discrimination against one race and in favor of another as affected by the Fourteenth Amendment. Black, J., in Younger *v.* Judah, 111 Mo. 303, 33 Am. St. Rep. 527; West Chester, etc., R. Co. *v.* Miles, 55 Pa. St. 209, 93 Am. Dec. 744. And see Hall *v.* De Cuir, 95 U. S. 485. And that a rule providing for the separation of white and colored passengers in cars in all respects equal in comfort is reasonable. Chesapeake, etc.; R. Co. *v.* Wells, 85 Tenn. 613; West Chester, etc., R. Co. *v.* Miles, 55 Pa. St. 209, 93 Am. Dec. 744; Chicago, etc., R. Co. *v.* Williams, 55 Ill. 185, 8 Am. Rep. 641. But until that tribunal had spoken, which is the final arbiter of what the federal constitution means, these decisions carried little weight outside of the jurisdiction in which they were rendered.

Never has there been an intermixture of the two races, socially, religiously, civilly, or politically. By uninterrupted usage, the blacks live apart, visit and entertain among themseves, occupy separate places of public worship and amusement, and fill no civil or political stations, not even sitting to decide their own causes. In fact, there is not an institution of the state in which they have mingled indiscriminately with the whites.

Colored persons have their own schools, their own churches, and often their own places of amusement. Whites attending places of amusement designed specially for colored persons may be required to occupy separate seats. When colored persons attend theaters and other places of amusement, conducted and carried on by white persons, custom assigns to them separate seats.

Such separation does not necessarily assert or imply inferiority on the part of one or the other. It does no more than work out natural laws and race peculiarities. It ordinarily contributes to the convenience and comfort of both. The colored man has and is entitled to have all the rights of a citizen, but it cannot be said that equality of rights means identity in all respects.

The ladies' car is known upon every well-regulated railroad, implies no loss of equal right on the part of the excluded sex, and its propriety is doubted by none.

The right of the carrier to separate his passengers is founded upon two grounds: his right of private property in the means of conveyance, and the public interest. The private means he uses belong wholly to himself, and imply the right of control for the protection of his own interest as well as the performance of his public duty. He may use his property, therefore, in a reasonable manner. It is not an unreasonable regulation to seat passengers so as to preserve order and decorum, and to prevent contacts and collisions arising from natural or well-known customary repugnancies, which are likely to breed disturbances by a promiscuous sitting. This is a proper use of the right of private property, because it tends to protect the interests of the carrier as well as the interests of those he carries. If the ground of regulation be reasonable, courts of justice cannot interfere with his right of property.

The public also has an interest in the proper regulation of public conveyances for the preservation of the public peace. A railroad company has the right and is bound to make reasonable regulations to preserve order in their cars. It is much easier to prevent difficulties among passengers by regulations for their proper separation than it is to quell them. The danger to the peace engendered by the feeling of aversion between individuals of the different races cannot be denied. It is the fact with which the company must deal. If a negro take his seat beside a white man or his wife or daughter, the law cannot repress the anger or conquer the aversion which some will feel. However unwise it may be to indulge the feeling, human infirmity is not always proof against it. It is much wiser to avert the consequences of this repulsion of race by separation than to punish afterwards the breach of the peace it may have caused.

As one judge in a northern state has said: "The question as to whether there is such difference between the white and black races as makes it a reasonable ground of separation is one of difference, not of superiority or inferiority. Why the Creator made one black and the other white, we know not; but the fact is apparent, and the races distinct, each producing its own kind, and following the peculiar law of its constitution. Conceding equality, with natures as perfect and rights as sacred, yet God has made them dissimilar, with those natural instincts and feelings which he always imparts to his creatures when he intends that they shall not overstep the natural boundaries he has assigned to them. The natural law which forbids their intermarriage, and that social amalgamation which leads to a corruption of races, is as clearly divine as that which imparted to them different natures. The tendency of intimate social intermixture is to amalgamation, contrary to the law of races. The separation of the white and black races upon the surface of the globe is a fact equally apparent. Why this is so it is not necessary to speculate; but the fact of a distribution of men by race and color is as visible in the providential arrangement of the earth as that of heat and cold. The natural separation of the races is therefore an undeniable fact, and all social organizations which lead to their amalgamation are repugnant to the law of nature. From social amalgamation it is but a step to illicit intercourse, and but another to intermarriage. But to assert separateness is not to declare inferiority in either; it is not to declare one a slave and the other a freeman—that would be to draw the illogical sequence of inferiority from difference only. It is simply to say that following the order of Divine Providence, human authority ought not to compel these widely separate races to intermix. The right of such to be free from social contact is as clear as to be free from intermarriage. The former may be less repulsive as a condition, but not less entitled to protection as a right. When, therefore, we declare a right to maintain separate relations, as far as is reasonably practicable, but in a spirit of kindness and charity, and with due regard to equality of rights, it is not prejudice, nor caste, nor injustice of any kind, but simply to suffer men to follow the law of races established by the Creator

himself, and not to compel them to intermix contrary to their instincts."

Many of the states have enacted laws known as civil rights statutes; under them it has been held that the proprietor of a theater will be liable in damages for a refusal to admit a colored person, Joseph *v.* Bidwell, 28 La. Ann. 382; 26 Am. Rep. 102; Donnell *v.* State, 48 Miss. 661; 12 Am. Rep. 375; and for a refusal to admit a colored person to the several circles or grades of seats in a theater, Baylies *v.* Curry, 128 Ill. 287; and for refusing a colored person admission to a skating rink, People *v.* King, 110 N. Y. 418; 6 Am. St. Rep. 389; and for drawing any line of distinction between a white and black man at a restaurant, Ferguson *v.* Gies, 82 Mich. 358; 21 Am. Rep. 576; but, as we have no such statute, no such rulings would be made here.